

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge

Sacramento, California

**January 28, 2014 at 2:00 p.m.**

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1. [12-22307](#)-C-13 MERVYN PERERA MOTION TO MODIFY PLAN  
PGM-4 Peter G. Macaluso 12-19-13 [[52](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 19, 2013. 35 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Modified Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

(1.) Trustee is uncertain of the plan payment proposed. Section 1.01 and Debtor's Declaration (Dkt. 54) propose a \$225.00 plan payment starting January 2014; however, Debtor's Motion (Dkt. 52) proposes a \$300.00 plan payment starting January 2014. Schedules I & J (Dkt. 55) support a monthly plan payment of \$225.00.

(2.) Debtor's original plan payment was to increase in March 2014 from \$200.00 to \$300.00 with Debtor using the balance of his 401K loan payment of \$460.97 to fund a replacement vehicle once the loan was repaid.

**January 28, 2014 at 2:00 p.m.**

Debtor's modified plan does not allow for an increase in the plan payment once the 401K loan has been paid in full.

### **Debtor's Response**

Debtor provide responds to Trustee's Opposition, stating that Section 1.01 of the plan should provide for 24 payments at \$200.00 and 36 payments at \$325.00, with the increase starting in March 2014. Debtor requests correcting the lack of accounting for the increase in the Order Confirming the Modified plan.

The court is amenable to permitting Debtor to clarify the plan payments in the Order Confirming the Modified plan. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied, Debtor's Chapter 13 Plan filed on December 19, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**IT IS FURTHER ORDERED** that in the Order Confirming the Modified Plan, Debtor will clarify that plan payments will be made at \$200.00 for a period of 24 months, increasing to \$325.00 for 36 months, commencing March 2014.

2. [13-34010](#)-C-13 JOHN/TANYA MANNIX  
MAC-1 Marc A. Caraska  
**Thru #3**

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA  
12-5-13 [[18](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 5, 2013. Twenty-eight days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Value Collateral without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to Value the Collateral of Bank of America. However, it is unclear which "Bank of America" entity the Debtors refer to in their motion; there are several different entities with the words "Bank of America" in their names listed with the California Secretary of State and several listed as federally insured financial institutions. Though service of process appears proper for several of the Bank of America entities, the court declines to guess at which one the Debtor's seek relief from.

The motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Motion for Valuation of  
Collateral filed by Debtor(s) having been  
presented to the court, and upon review of the  
pleadings, evidence, arguments of counsel, and  
good cause appearing,

**IT IS ORDERED** that the Motion to  
Value is denied without prejudice.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 23, 2013. 14 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$9,914.00.** No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2010 Toyota Camry. The Debtor seeks to value the property at a replacement value of \$9,914.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in September 2009, more than 910 days prior to the filing of the petition, with a balance of approximately \$12,088.80. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$9,914.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Motion for Valuation of  
Collateral filed by Debtor(s) having been  
presented to the court, and upon review of the  
pleadings, evidence, arguments of counsel, and

good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Toyota Financial Services secured by a 2010 Toyota Camry, is determined to be a secured claim in the amount of \$15,675.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$9,914 and is encumbered by a lien a securing claim which exceeds the value of the Property.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2013. Forty-two days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Plan.**

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtors' plan on the following grounds:

1. Debtors' plan does not pass the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$20,384.66 and Debtors are proposing a 3.9% dividend to unsecured creditors, paying approximately \$12,874.

Debtors filed their first amended plan to remedy the liquidation issue raised on Trustee' previous Objection to Confirmation (Dkt. 21); however, Debtors only increased their proposed payments into the plan without increasing the dividend to general unsecured creditors. The plan must propose to pay no less than the non-exempt equity of \$20,384.66. Trustee has no opposition to Debtors proposing to increase the dividend to unsecured claims in the order confirming the plan.

2. On December 20, 2013, the State Board of Equalization filed Claim 12, indicating a priority debt in the amount of \$3,861.54. This claim is not provided for in Debtors' plan and Debtors cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6).

While the court is amendable to Debtors' remedying Trustee's concerns regarding the dividend to unsecured creditors in the order confirming the plan, the plan still does not provide for the priority claim

of the State Board of Equalization. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. When Debtors submit a later modified plan for confirmation, it should include the appropriate dividend to unsecured creditors and provide for the State Board of Equalization's claim 12.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

5. [13-31318](#)-C-13 JEANNIE BROWN  
FF-1 Gary Ray Fraley  
**Thru #6**

CONTINUED MOTION TO VALUE  
COLLATERAL OF MARK R. FELDMAN  
9-19-13 [[16](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 19, 2013. 28 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to set an evidentiary hearing for [date] at [time] on the Motion to Value Collateral.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **Prior Hearing**

A prior hearing on the Motion to Value Collateral of Mark R. Feldman was held on November 5, 2013. At that hearing, the court continued to matter to January 28, 2014, to permit Mark R. Feldman, the Creditor, to file and serve an opposition on or before December 20, 2013. Any response to the opposition was due on or before January 10, 2014. (See Dkt. 40)

On December 20, 2013, Mark R. Feldman filed and served an opposition. It is incorporated below. No timely response was filed by the Movant.

#### **Motion to Value Collateral**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7406 Myrtle Vista, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$223,527.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$234,017.02. Mark R. Feldman's second deed of trust secures a loan with a balance of approximately \$23,720.00.

#### **Creditor's Opposition** (filed 12/20/13, Dkt. 49)

Creditor, Mark R. Feldman, opposes the Motion to Value, arguing the



appropriate value of the home is \$270,000.00.

In support of his valuation of \$270,000.00, Creditor attaches the appraisal of Taylor Greer of Fatzer Appraisal Group (Exh. C, Dkt. 50). The appraisal lacks an authenticating Declaration signed by Taylor Greer.

### **Discussion**

There exists a material factual dispute concerning the value of the subject property. In Debtor's opinion, the property is valued at \$223,527. With a first deed of trust totaling \$234,017, Debtor's valuation would reduce Creditor's claim secured by a second deed of trust to \$0.00 secured. Creditor submits an unverified appraisal suggesting a value of \$270,000 for the property. If the property is valued at \$270,000, there is approximately \$36,000 in equity remaining after accounting for the first deed of trust, providing full security for Creditor's claim.

The court's decision is to set an evidentiary hearing for **[date]** at **[time]** where the parties can submit adequate evidence supporting their valuations of the subject property in an effort to resolve the dispute concerning the amount of Creditor's secured claim in this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Motion to Value filed by Debtor(s)  
having been presented to the court, and upon  
review of the pleadings, evidence, arguments of  
counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is to be  
set for an evidentiary hearing on **[date]** at  
**[time]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2013. Forty-two (42) days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to continue the Motion to Confirm the Plan to [date] at [time].** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **Prior Hearing**

On November 5, 2013, the court held a prior hearing on the Motion to Confirm. The court continued the matter to January 28, 2014, as a pending Motion to Value (Dkt. 16) was continued for supplemental pleadings.

The Motion to Value is set for hearing on January 28, 2014 and the court intends to set it for evidentiary hearing on [date] at [time] to resolve a valuation dispute. Therefore, the court will also continue the Motion to Confirm to the same date and time as the evidentiary hearing.

#### **Opposition to Confirmation**

The Chapter 13 Trustee opposes confirmation of Debtor's plan on the following grounds:

(1.) Debtor is delinquent \$1,963.31 in plan payments. Debtor has paid \$0.00 into the plan.

(2.) Debtor's plan relies on a pending Motion to Value the secured claim of Mark R. Feldman. If the Motion is not granted, Debtor cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

(3.) The plan is not Debtor's best effort because Debtor's Schedule J reflects net income of \$2,381.96 and Debtor's amended plan calls

for payments of \$1,963.13 per month for 60 months. Not all of Debtor's disposable income is being paid into the plan. 11 U.S.C. § 1325(b).

The court's decision is to continue the Motion to Confirm to **[date]** at **[time]**, to be heard concurrently with the evidentiary hearing on the pending Motion to Value. Debtor should also resolve any other outstanding objections made by the Trustee before the continued hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is continued to **[date]** at **[time]**.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2013. 42 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Plan.**

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Chapter 13 Trustee opposes confirmation of Debtors' plan for the following reasons:

1. Debtors' case is overpaid. Debtors' original plan (Dkt. 5) called for payments of \$2,180 for 60 months. The most recent amended plan (Dkt. 57) calls for payments of \$1,400 for 60 months. Debtor has made a total of \$8,870 to date and the case is currently overpaid by \$1,870, based on the proposed plan.
2. The plan is not Debtors' best efforts. 11 U.S.C. § 1325(b). Debtor is over the median income and proposing plan payments of \$1,400 for 60 months with a 40% dividend to unsecured creditors.

In Class 4 of the most recent amended plan, Debtors list a "Worldmark Timeshare" due payments of \$814.04 per month. Debtor owns 45,000 creditors that could be sold for \$30,000, which Debtors propose to retain, paying \$49,082.40. If Debtors did not have this payment, the plan payment could be increased to \$2,210, resulting in \$101,000 to unsecured creditors, or about 80% of total unsecured debts. If Debtor does not qualify for the deduction on Form B22C, as either not contractually due, or not due to a secured claim, Debtors' plan is not Debtors' best effort.

Debtors claim \$966.03 in "special circumstances" (Dkt. 47, Line 57), with insufficient proof and explanation as required until the instructions to show these expenses are necessary and reasonable.

Debtors' claim \$262.54 in additional car maintenance/repair without sufficient explanation.

3. Debtors' plan may not be proposed in good faith. 11 U.S.C. § 1325(a)(3). The plan payment has decreased from \$2,180 per month, 100% plan to a \$1,400 per month, 12% plan and, finally, to a \$1,400 per month, 40% plan with little explanation.

Debtors have over \$16,000 per month in gross income, with expenses of \$699 per month for home maintenance, \$344 per month for clothing, and \$1,600 per month for various other expenses. Debtor appears to have substantial income with substantial surplus, if these expenses are not allowed or do not exist for the entire 60 months of the plan.

Debtors have a \$21,395 FLHTK Harley Davidson, a \$20,490 2007 AR 230 Yamaha boat owned free and clear, a 2013 Dodge Dart, a 2011 Chevrolet Tahoe, a 2005 Toyota Corolla, a 2004 Hyundai Santa Fe, and a timeshare, which Debtors propose to retain paying. Trustee questions the motivation and sincerity of Debtors in pursuing this plan considering all the property retained by Debtors and the expenses Debtors maintain.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2013. 35 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to grant the Motion to Confirm the Modified Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because the Debtors are paid ahead under the terms of the proposed plan. Debtors have paid the Trustee \$1,400 through December 2013, with the last payment of \$500.00 posted on December 19, 2013. The proposed plan calls for payments totaling \$900.00 through December 2013.

#### **Debtors' Response**

Debtors stated that they paid their January plan payment early because they did not want to fall behind. Section 1.01 is correct in stating that Debtors will make payments of \$900.00 through December 2013 and payments of \$500.00 starting January 2014 for 52 months.

Debtors' explanation remedies Trustee's concern. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed. Debtors shall make the next payment of \$500.00 on schedule for February 2014.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified

Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 18, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. [11-46827](#)-C-13 UBONG INYANG  
PGM-3 Peter G. Macaluso

CONTINUED OBJECTION TO NOTICE  
OF POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
3-7-13 [[57](#)]

Local Rule 3007-1(b) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, and Office of the United States Trustee on March 7, 2013. By the court's calculation, 47 days' notice was provided.

**Final Ruling:** This Objection to a Notice of Post-Petition Mortgage Fees, Expenses and Charges has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1) and Rule 3007-1(d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The Objection to Notice of Post-petition Mortgage Fees, Expenses, and Charges is overruled as moot.** No appearance required. The court makes the following findings of fact and conclusions of law:

#### **Stipulation**

On December 17, 2013, the court entered an Order approving a Stipulation between the parties resolving this pending Objection. Therefore, the objection will be overruled as moot (Dkt. 100).

The Stipulation provides that Creditor, Green Tree Servicing, LLC, will have a valid security interest in 270 Aviator Circle, Sacramento California. Debtor and Creditor entered into a permanent loan modification that was approved by the court on January 14, 2014. This Stipulation resolves the continued Objection to Green Tree Servicing's Notice of Post-Petition Mortgage Fees, Expenses and Charges.

The court shall issue a scheduling order substantially in the following form holding that:

The Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges filed in this case by Debtor having been presented to the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection is overruled as moot.



Local Rule 9014-1(f)(1) Motion - Opposition Filed and Withdrawn.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 24, 2013. 35 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. The Chapter 13 Trustee filed an opposition on January 14, 2014 and subsequently withdrew the opposition on January 22, 2014. No other opposition to the Motion was filed by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated  
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13  
Plan filed by the Debtors having been presented to  
the court, and upon review of the pleadings,  
evidence, arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on December  
24, 2013 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the  
Chapter 13 Trustee for approval as to form, and if  
so approved, the Chapter 13 Trustee will submit the

proposed order to the court.

**IT IS FURTHER ORDERED** that in the Order Confirming the Plan, Debtor will include the following change: "\$19,998.00 total paid for months 1 through 19, \$717.00 a month for months 20 through 60."

11. [12-34627](#)-C-13 DOROTHY SMITH MOTION TO VALUE COLLATERAL OF  
SDB-2 W. Scott de Bie BANCO POPULAR NORTH AMERICA  
12-10-13 [[30](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. 28 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 151 Scenic Way, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$106,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Aurora Bank's first deed of trust secures a loan with a balance of approximately \$211,475.52. Banco Popular North America's second deed of trust secures a loan with a balance of approximately \$20,466.16. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the

secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Banco Popular North America's secured by a second deed of trust recorded against the real property commonly known as 151 Scenic Way, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$106,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 2013. 35 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Modified Plan was not set for hearing with Notice. The court will treat the Motion as a Local Bankr. Rule 9014-1(f)(2) motion. Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to deny the Motion without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Local Bankr. Rule 9014-1(d)(2) requires that every motion be accompanied by a separate notice of hearing stating the Docket Control Number, the date and time of the hearing, the location of the courthouse, the name of the judge hearing the motion, and the courtroom in which the hearing will be held.

Here, Debtor provides no notice of the submitted Motion, Declarations, and Exhibits. The purpose of the notice is to advise potential respondents whether and when written opposition must be filed, the deadline for filing and servicing it, and the names and addresses of the persons who must be served with any opposition.

As Debtor's Motion does not conform with the requirements of the Local Bankruptcy Rules, the court's decision is to deny the motion without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied  
without prejudice.

13.    [13-23437](#)-C-13    MARK/LAURIE CARMICHAEL    MOTION TO CONFIRM PLAN  
         DMB-1                David M. Brady                12-6-13 [[72](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 6, 2013. 42 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The Motion to Confirm the Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 6, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2013. 42 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The Motion to Confirm the Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 12, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [13-34546](#)-C-13 DANIEL/KATHLEEN REID  
SLH-1 Seth L. Hanson  
**Thru #18**

CONTINUED MOTION TO VALUE  
COLLATERAL OF BANK OF AMERICA,  
N.A.  
11-22-13 [[14](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 13, 2013. 28 days' notice is required. That requirement was met.

**Final Decision:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** No appearance required. The court makes the following findings of fact and conclusions of law: :

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 16157 Brewer Road, Grass Valley, California. The Debtor seeks to value the property at a fair market value of \$184,890.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$216,448.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$43,401.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

On January 19, 2014, the court issued a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 16157 Brewer Road, Grass Valley, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$184,890.00 and is encumbered by senior liens securing claims which exceed the value of the Property.



16. [13-34546](#)-C-13 DANIEL/KATHLEEN REID  
TSB-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
12-23-13 [[23](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 23, 2013. By the court's calculation, 36 days' notice was provided. Fourteen days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on the pending Motion to Value Collateral of Bank of America, which was set for hearing on January 14, 2014. If the motion to value is not granted, Debtors' plan does not have sufficient monies to pay the claim in full.

The court granted the pending Motion to Value on January 19, 2014. Therefore, the Trustee's objection is resolved and will be overruled as moot. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan  
filed by the Trustee having been presented to  
the court, and upon review of the pleadings,  
evidence, arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that the Motion is  
granted, Debtor's Chapter 13 Plan filed on  
November 14, 2013, is confirmed, and counsel

**January 28, 2014 at 2:00 p.m.**

for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. [13-34349](#)-C-13 DANNY/RENEE JOHNSON OBJECTION TO CONFIRMATION OF  
MDE-1 Seth L. Hanson PLAN BY CITIMORTGAGE, INC.  
12-9-13 [[17](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 9, 2013. By the court's calculation, 50 days' notice was provided. Fourteen days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Secured Creditor opposes confirmation of the Plan on the basis that Debtors' Plan does not cure the default on Secured Creditor's claim. 11 U.S.C. §1322(b)(5). According to the Plan, Debtors have provided for arrears in the amount of \$26,000.00. However, the arrearage on Secured Creditor's claim is \$34,176.54. Thus, Debtors do not adequately to provide for the curing of the remaining default of \$8,176.54.

**Debtors' Statement of Non-opposition** (Dkt. 24).

Debtors have no response to Creditor's objection and agree that the plan is unconfirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The

objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 23, 2013. By the court's calculation, 36 days' notice was provided. Fourteen days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors' Plan does not work mathematically to provide for the curing of default. 11 U.S.C. §1322(b)(5). The monthly dividend of \$435.00 per month to Creditor CitiMortgage is insufficient to pay \$34,176.54 in 60 months, listed in Creditor's Objection to Confirmation filed December 9, 2013. It will take 78 months to pay \$34,176.54. The arrears in Class I for CitiMortgage were scheduled for \$26,000.00.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan  
filed by the Trustee having been presented to  
the court, and upon review of the pleadings,  
evidence, arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

19.    [12-25750](#)-C-13    JOHNNIE/ROBBIE ARNOLD                    MOTION TO MODIFY PLAN  
         CK-5                    Catherine King                    12-19-13 [[96](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 19, 2013. 35 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Modified Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

(1.) Under the confirmed plan (Dkt. 5), Members First Credit Union was listed as a Class 2 purchase money security interest creditor. The modified plan does not propose treatment; therefore, the claim will not be discharged under 11 U.S.C. § 1328(a). Trustee concedes no claim has been filed and the amount owed, scheduled at \$679.00 is modest, so it may not prevent Debtor from complying with the plan.

(2.) The First Modified Plan was not filed as a separate document on the docket. Its existence is not clearly discernible.

(3.) There is a discrepancy over the attorneys' fees paid. The Order Confirming the original plan (Dkt. 45) reflects attorneys' fees of \$1,000 paid prior to filing, with \$2,500 to be paid in the plan. The

proposed plan lists attorneys' fees as \$2,500 paid prior to filing, with \$2,500 to be paid in the plan.

The court agrees that the Debtor needs to provide explanations for the changed treatment of Members First Credit Union and the attorneys' fees discrepancy. The court located the Modified Plan as a separate document at docket #72 on the court's docket, therefore, the court will overrule this part of the Trustee's objection. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 26, 2013. 28 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to grant the Motion to Value Collateral and determine the value of creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4831 Cibola Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$75,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$143,499. Anana Bliss Revocable Living Trust's second deed of trust secures a loan with a balance of approximately \$40,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

### **Trustee's Response**

The Chapter 13 Trustee responds to Debtor's Motion and provides the court with a copy of a letter received by the Trustee from Anana Bliss, Trustee for the Anana Bliss Revocable Living Trust.

The letter is dated December 11, 2013, and states that the Debtor's property valuation is "too old to be useful." Creditor asserts that the market has improved and the valuation used by Debtor is too old.

### **Creditor's Objection**

Creditor submits its own response to Debtor's Motion. Creditor asserts that the Motion is based on fraudulent information as the estimate

of the current value is inaccurate. There is no supporting documents revealing the true value of the property.

**Debtor's Response** filed 01/22/14

Debtor replies to Creditor's Opposition and states that Creditor did not file any contrary evidence of value regarding the subject property and that his opinion on value is evidence of the asset's value.

### **Discussion**

To the extent Creditor objects to the debtor's opinion of value, that objection is overruled, particularly in light of its failure to file any contrary evidence of value. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980). The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Anana Bliss Revocable Living Trust secured by a second deed of trust recorded against the real property commonly known as 4831 Cibola Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan. The value of the Property is \$75,000.00 and is encumbered by senior lies securing claims which exceed the value of the Property.



Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. Fort-two days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Plan.**

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtor's plan because Debtor is \$674.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$337.00 is due on January 25, 2013. Debtor has paid \$531.20 into the plan to date.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney December 23, 2013. By the court's calculation, 36 days' notice was provided. Fourteen days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee objects to the confirmation of Debtor's plan for the forgoing reasons:

1. Debtor did not appear at the First Meeting of Creditors. The Debtor is required to attend the meeting under 11 U.S.C. § 343 and the Debtor has not presented any evidence to the Court as to why he did not appear. The meeting was continued to January 23, 2014.
2. The plan relies on pending motion. Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value Collateral of Resurgent Mortgage Servicing, which is set for hearing on January 14, 2014. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claim in full.

### **Debtor's Response**

Debtor responds to Trustee's objection to confirmation and states that Trustee is correct regarding Debtor's lack of attendance at the First Meeting of Creditors. The meeting was continued to January 23, 2014 and Debtor plans to attend. The Motion to Value was granted at the hearing on January 14, 2014 (Dkt. 31). The secured claim of Resurgent Mortgage Servicing, a Division of Resurgent Capital, L.P.'s secured claim was determined to be \$0.00.

### **Discussion**

The court's decision is to sustain the objection. If at the hearing on the Objection Debtor satisfactorily explains his lack of attendance at

the First Meeting of Creditors and has attended the second meeting of Creditors, the court is amenable to altering its tentative decision and overruling the Objection.

As the pending Motion to Value was granted on January 14, 2014, the court overrules this part of the Trustee's Objection as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 30, 2013. Fourteen days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to continue the Motion to Value Collateral to [date] at [time].** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 1 Nader Court, Sacramento, California. The Debtors seek to value the property at a fair market value of \$345,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Chase Bank's first deed of trust secures a loan with a balance of approximately \$396,629.00. Flagstar Bank, FSB's second deed of trust secures a loan with a balance of approximately \$95,184.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

**Creditor's Opposition** (filed 01/21/14)

Counsel for Creditor Flagstar Bank, FSB spoke with a paralegal at Debtors' counsel's office and was informed that they would agree to a stipulation to avoid the lien but, since that initial conversation, no calls or e-mails have been returned.

Flagstar Bank, FSB has no opposition to Debtors' Motion to Value Collateral, and consents to the lien being avoided and to being paid as a general unsecured creditor. However, Flagstar Bank, FSB requests that the Court either:

1. Continue the matter so that the parties may enter into a stipulation to avoid the lien; OR
2. Grant the motion but subject to the following conditions:

- a. The avoidance of Flagstar Bank, FSB's second deed of trust is contingent upon the Debtors' completion and discharge of their Chapter 13 Plan;
- b. Upon discharge and completion, the Judgment avoiding the lien may be recorded with the local County Recorder's Office;
- c. Flagstar Bank, FSB shall retain the full amount due under the loan in the event of either a dismissal of Debtors' Chapter 13 or conversion of Debtors' Chapter 13 case to any other Chapter under the United States Bankruptcy Code;
- d. In the event that the first lien holder on the subject property forecloses on its security interest and extinguishes Flagstar Bank, FSB's second deed of trust prior to Debtors' completion of their Chapter 13 plan and receipt of discharge, Flagstar Bank, FSB's lien shall attach to the surplus proceeds of the foreclosure sale for the full amount of the loan balance at the time of the sale.

### **Discussion**

The court's decision is to continue the Motion to Value the secured claim of Flagstar Bank, FSB. While the court has sufficient evidence to grant the Motion, it is mindful of the request of Creditor to continue Stipulation discussions with Debtor to ensure its interest are adequately protected. If circumstances change by the time of the hearing, the court is amenable to adjusting the tentative ruling.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minute hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Value is continued to **[date]** and **[time]**.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. 35 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Modified Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

(1.) The proposed modified plan lists payments as \$4,183.77; there is no mention of the total paid in by Debtors and according to Trustee's records, Debtors have paid in a total of \$64,407.04. Trustee is unsure of proposed plan payments.

(2.) The Modified Plan was not filed as a stand alone document and is difficult to locate on the docket.

(3.) Current statements of income and expenses were filed separately. Debtor filed a current statement of income and expenses as an exhibit and as one document with the motion to confirm.

Debtors need to remedy the issues raised by the Trustee. The amended schedules and modified plan should be filed separately on the docket so they may be readily retried by the court, Trustee, and interested creditors. Debtors need to clarify the proposed plan payment and the amount paid into the plan in their Modified Plan. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2013. 35 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated  
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13  
Plan filed by the Debtors having been presented to  
the court, and upon review of the pleadings,  
evidence, arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on December  
13, 2013, is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the  
Chapter 13 Trustee for approval as to form, and if  
so approved, the Chapter 13 Trustee will submit the



proposed order to the court.

26. [11-41271](#)-C-13 ERIK DEVUYST AND VELMA MOTION TO MODIFY PLAN  
BLG-2 POLK-DEVUYST 11-26-13 [[69](#)]  
Chad M. Johnson

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2013. 35 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on November 26, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. [11-43271](#)-C-13 CORINNE SAUVE MOTION TO CONFIRM PLAN  
PJR-7 Philip J. Rhodes 12-2-13 [[177](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Service Not Provided. Local Bankruptcy Rule 9014-1(e)(2) requires that a proof of service, in the form of a certificate of service, be filed with the court clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. The proof of service must be filed as a separate document and shall bear its own Docket Control Number. Debtor has not filed a Proof of Service, however, indicating to whom the Motion was sent, and when and how service was effected, in violation of the provisions of Local Bankruptcy Rule 9014-1(e).

The court cannot determine whether Debtors provided the requisite 42 days' notice for confirmation of modified plans prior to confirmation, as mandated by Local Bankruptcy Rule 3015-1(d)(1). The also cannot determine to whom the Motion and supporting pleadings were sent.

**Tentative Ruling:** The Motion to Confirm the Plan was not properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Amended Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Local Bankruptcy Rule 3015-1(d)(1) requires that notice be given under Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). Therefore, to meet the requirements of Local Bankruptcy Rule 3015-1(d)(1), the hearing must be set on 42 days' notice (28 days' notice under Federal Rule of Bankruptcy Procedure 2002(b) and the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1)). The Motion is denied on this independent ground.

#### **Trustee's Objection to Debtor's Motion to Confirm**

Service issues notwithstanding, there are defects with Debtor's plan that must be corrected before the proposed plan can be confirmed. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee has filed an opposition to the Motion

to Confirm for the reasons stated below:

1. Trustee cannot determine what additional plan payments, if any, are called for by the plan. The case was filed as Chapter 13 on September 28, 2011, and the Debtor paid in \$22,850.00, although no plan was ever confirmed. Debtor converted to a Chapter 7, 11 months into the Chapter 13 Plan on August 10, 2012, and reconverted to a Chapter 13 Plan on October 18, 2013. The pending plan has no additional provisions and calls for 55 months of payments of \$350.00, commencing the month after the order for relief under Chapter 13, which would total \$19,250.00.

The effective date of this plan is confirmation, but plan payments are measured from October 2011. Confirmation of this plan would require no further payments even though the applicable commitment period has not elapsed, and the plan may mislead creditors into believing that additional payments are called for under the plan. In the event that plan payments are measured from the latest reconversion date, the plan calls for 55 months of payments, which would arguably extend the plan past 60 months contrary to 11 U.S.C. § 1322(d).

2. Debtors have not filed current Schedules I and J, and the case is two years old. Trustee asserts that the Plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor's Form 22C, filed November 1, 2011, prior to the conversion to Chapter 7 and reconversion to Chapter 13, reflects that Debtor is below median income. Debtor has proposed a plan paying \$250.00 per month for 55 months, with a guaranteed dividend of no less than 0% to general unsecured claims.

In her motion to confirm the second amended plan, Debtor details her household income as having increased to \$8,960.00 and that her projected mortgage payment will be \$2,051.81. In the declaration in support of the motion to reconvert, Debtor indicated that her household expenses total \$6,401 per month, including a mortgage payment of \$3,216 and that she had a net surplus income of at least \$2,599 per month to contribute toward her Chapter 13 Plan. (Dckt. No. 165).

Debtor states in her declaration to confirm plan (Dckt. No. 178) that their projected annual income is \$105,094, which is below median income for a household of 8. This is despite the fact that her household income for six months preceding the reconversion to Chapter 13 totaled \$60,013 (or \$10,002.16/ month) and states that the income averages monthly over \$9,000 per month that Debtor will estimate a future income of only \$8,960.00.

Trustee states that if Debtor would file recent Schedules I and J would help address Trustee's concerns.

3. Debtor might not be able to afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

(A.) Trustee is unable to determine whether Debtor has the ability to make plan payments. Debtor's case has been pending for more than 2 years, filed originally on September 28, 2011, and was converted

to Chapter 8 on August 10, 2012. Debtor later converted back to Chapter 13 on October 7, 2013, Debtor filed a motion to reconvert to Chapter 13. In the Motion to Convert, Debtor indicated that the income of the debtor and her spouse were improving significantly from the original file date and that she had hoped to get a discharge in her Chapter 7, and then file a subsequent Chapter 13 to maintain her home.

Debtor indicated in her declaration supporting the motion to confirm the Chapter 13 Plan that her and her spouse's net income for the six months prior to the reconversion totals \$60,013.00. Trustee requests that Debtor file updated documents to adequately disclose all income and expenses of both Debtor's household and the business expenses of her non-filing spouse.

(B.) Debtor is delinquent in her payments under 11 U.S.C. § 1325(a)(2); the case was reconverted in October 2013, and no payments have been made. Arguably, Debtor is \$700.00 delinquent in plan payments to Trustee to date and the next scheduled payment of \$350.00 is due on January 25, 2014. Debtor seems unable or unwilling to make the payments. The case was originally filed on September 28, 2011, from the commencement of the case until the date of her conversion to Chapter 7, a total of 10 payments had come due under the plan. During the pendency of the plan, Debtor made a total of 8 payments and was delinquent at the time the case was converted to Chapter 7.

Trustee had filed a motion to dismiss for failure to make payments on two separate occasions on February 6, 2012, and on July 2, 2012. Ultimately, Debtor converted to Chapter 7 on October 18, 2012, to avoid the dismissal which was granted on July 25, 2012. The court later changed the ruling to allow Debtor to convert the case. Debtor's prior bankruptcy case, Case No. 11-32454, was also dismissed for failure to make payments.

(C.) Debtor proposes to value the secured claims of Litton Loan Servicing and Key Bank, but Debtor has not filed the appropriate motions to value collateral.

(D.) Debtor's Second Amended Plan proposes to pay ongoing mortgage payments in Class 4 of the Plan. Debtor is delinquent in mortgage payments (Court claim No. 7, filed February 1, 2012), which indicates that Debtor was \$47,791.60 delinquent at the time of her original filing date, September 28, 2011. Based on the plan language of the plan in Class 1, mortgage accounts that are delinquent at the time of filing should be provided for and paid through the plan in Class 1.

In her declaration to support confirmation, Debtor admits that she has not received a loan modification. Debtor does not list the amount owed in mortgage arrears or propose a monthly dividend to cure the arrearages. Trustee requests that Debtor show both the pre-petition arrearages and the post-petition arrearages in Class 1.

5. Debtor misclassified her mortgage claim. Debtor's Second Amended Plan proposes to pay ongoing mortgage payments in Class 4 of the Plan. Debtor is delinquent in mortgage payments, which indicates

that Debtor was \$47,791.60 delinquent at the time of her original filing date on September 2011. Mortgage accounts that are delinquent at the time of filing should be provided for and paid through the plan in Class 1. Debtor admits that she has not received a loan modification, and does not list the amount owed in mortgage arrears or propose a monthly dividend to cure the arrearages. The ongoing mortgage payment should be paid in Class 1 of the plan, and Debtor should be required to disclose the full amount of her mortgage arrearages at the time of her filing of this plan.

6. Debtor's Plan may not comply with applicable law as it does not authorize prior disbursements that the Trustee made under the terms of Debtor's prior plan under 11 U.S.C. § 1325(a)(1).

Debtor's prior plan, called for ongoing Class 1 mortgage payments to be paid by Trustee. To date, Trustee has paid \$19,286.75 to Chase home Finance. Trustee also refunded \$2,744.62 to Debtor upon conversion to Chapter 7. Debtor's Second Amended Plan calls for payments to ongoing mortgage in Class 4 to be paid directly to Debtors, and does not authorize those payments.

7. Debtor's Plan calls for payment of \$2,500 in attorney fees, and indicates that \$0.00 was paid prior to filing. On November 1, 2011, Debtor filed their Rights and Responsibilities (Dckt. No. 29), which states that attorney fees in the case are \$2,500.00 and that \$0.00 was paid prior to filing. Debtor's Statement of Financial Affairs #9, shows that Debtor paid counsel \$1,500 prior to filing. All three documents contain different figures relating to attorney fees in this case.
8. The plan calls for payments to Placer County Treasurer in Class 2 of the plan, but does not designate a monthly dividend to be paid toward the claim.
9. Debtor's plan does not provide for the secured claims of ally Financial, listed on Schedule D, of the Legacy Lane Homeowners Association listed on Schedule D, the priority claim of Derek Cooper, listed on Schedule E, and the pending administrative claim of John R. Roberts for \$7,691.44.

In her declaration, Debtor indicates that she has paid off the claim of Ally Financial and sold the collateral, a 2007 GMC. Debtor also indicates that she has paid off the claim of her former spouse, Derek Cooper. Debtor has not supplied any evidence of the payoff of either account. Not has Debtor filed an objection to the claim of Ally Financial. It does not appear, additionally, that Debtor obtained court approval to dispose of the 2007 GMC.

10. Debtor has not provided Trustee with proof of income for the 60 days preceding the filing of their bankruptcy, as required by 11 U.S.C. § 521(e)(2)(A), Fed. R. Bankr. P. 4002(b)(3), and 11 U.S.C. § 521(e)(2)(A)(I). Trustee brought this deficiency to Debtor and her counsel's attention at the 341 meeting held on January 2, 2014, but those documents have not yet been received.
11. Debtor has not provided Trustee Debtor has not provided Trustee with

a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1). In her declaration, Debtor indicates that she is not required to file a tax return due to her income. Trustee requests that Debtor be required to supply tax documents for 2012 and 2011 for her non-filing spouse, if not filed jointly, as he is the primary bread winner in the household.

12. Debtor has wilfully attempted to mislead the Trustee. At the 341 Meeting held on January 2, 2014, Trustee questioned Debtor on her husband's business interests. Debtor indicated that her husband's business listed on Schedule B, Jacor, Inc. DbA: Evergreen Landscape Construction, was closed. Trustee then inquired as to whether Debtor's spouse had interests in any business ventures, and Debtor replied no. Debtor indicated that her spouse is "working as an employee" for a landscape contractor. In response, Trustee rephrased the question, asking if he had any interest in the business. Debtor replied no, clarifying that he is just an employee.

In the declaration in support of the motion to reconvert (Dckt. No. 165), however, Debtor details income from the business Debtor's spouse owns with a partner, and provides a list of contracts already pending. In the declaration in support of the motion to confirm, Debtor goes on to further detail the income within the six months prior to filing the amended plan, including income from the landscaping and contracting business they own with a partner.

Trustee's explanations of the manifold deficiencies and concerns with the Plan show that the amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

28. [13-29776](#)-C-13 SUSAN MARRON  
CA-2 Michael David Croddy  
**Thru #29**

CONTINUED MOTION TO CONFIRM  
PLAN  
10-31-13 [[47](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2013. 42 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Amended Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Trustee objected to confirmation of the plan on the basis that the plan may not comply with the applicable law under 11 U.S.C. § 1325(a)(1), and that Debtor may not be able to afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because of Debtor's intention to make direct payments to creditors without clearly identified expenses in Schedule J. Trustee requested that the matter be set for an evidentiary record to allow for discovery, as the present record would not support confirmation of the plan.

On December 2, 2013, Debtor filed a Motion to continue the Debtor's Motion to Confirm Debtor's First Amended Chapter 13 Plan to January 28, 2013, at 2:00 pm. Debtor makes this request to align the scheduling of the Motion to Confirm Plan with certain objections to proofs of claims that are being heard on that date.

#### **Debtor's Response to Trustee's Opposition to Confirmation**

After the continuance, Debtor filed a response to Trustee's Objection to Debtor's Motion to Confirm the First Amended Chapter 13 Plan.

(1.) With respect to Trustee's first objection to direct payments being made to creditors without clearly identified expenses on Schedule J, Debtor responds by stating both direct payments in Class 4 of the plan are provided for in Schedule J. The first mortgage in the amount of \$5,138.25/month is on line 1 of Schedule J, and the second mortgage in the amount of \$592.36 is on line 13(b).

(2.) As to the second objection of Trustee, in which Trustee asserts that payments of \$11,647.00 were due by November 25, 2013, and Debtor has paid only \$11,532.00, and Debtor will make up the \$125.00 difference forthwith.

(3.) Debtor will provide proof of the direct payment of \$4,253.09 in a supplemental exhibit before the January 28, 2014 hearing date. Trustee had objected to this payment because Debtor did not provide a declaration asserting that this sum, for this direct payment under Section 6.03 of the Plan.

(4.) As to the fourth objection of the Trustee, regarding a stipulation made on April 9, 2013, any issues related to the stipulation are being resolved with an objection to claim to be heard on January 28, 2014. Trustee had objected to this stipulation, which provided for a direct payment of a substantial sum (\$59,242.00), without disclosing the means of payment.

(5.) The Fifth Objection of the Trustee, regarding the "cramming down" of a secured claim of the IRS it to be heard on January 14, 2014. Trustee stated that Section 6.05 of the Plan provides for the "cramming down" of a secured claim of the IRS, when no motion to value appears in the record.

#### **Trustee's Reply to Debtor's Response to Trustee's Objection to Motion to Confirm**

(1.) Trustee agrees that the Motion to Value the secured claim of the Internal Revenue Service is best heard before the motion to confirm. This Motion was heard on January 14, 2014, and granted by this court. The Service's secured claim was determined to be \$0.00.

Thus, this part of Trustee's Objection has been addressed and is rendered moot.

(2.) Trustee concedes that the first and second mortgage are provided for in Schedule J.

(3.) Trustee concedes that Debtor is now current in their plan payments.

(4.) Trustee has not yet seen a supplemental exhibit proving direct payment of \$4,254.09.

(5.) As to the plan incorporating a stipulation that pre-dates the case in Section 6.04, based on the objections to claim, Trustee agrees that the plan should not be confirmed until after the outcome of the objections.

(6.) As to the value of the Internal Revenue Service claim, Trustee agrees this is addressed in Number 1 above.

Trustee does not agree that good cause exists to confirm the plan, absent the Debtor prevailing on the remaining issues raised in #1, 4, 5, or 6.

The two issues that remain in effect from Trustee's opposition to



the confirmation of Debtor's Plan are: the Debtor's Objection to Claim of OneWest Bank, FSB's Claim No. 1, CA-3, which is continued to [date] at [time] to allow Debtor to supply the alleged stipulation which reduced the amount owed on OneWest's mortgage claim on the real property located at 11133 Parkland Drive, Truckee, California; and the Debtor's supplemental exhibit demonstrating that direct payment of \$4,254.09.

The Motion to Confirm Plan will therefore be continued to [date] at [time] to permit Debtor to file evidence of the direct payment at controversy with the Trustee, and so that Debtor may produce further evidence supporting its objection to OneWest's Claim No. 1 to resolve The Objection to Claim of OneWest Bank, FSB (CA-3).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Debtor's Motion to Confirm Plan is continued to [date] and [time].

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. 44 days' notice is required. That requirement was met.

**Tentative Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(3). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to continue the hearing on the Objection to Proof of Claim number 1 of OneWest Bank is continued to [date] at [time].** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 1 on the court's official claims registry, asserts a \$926,197.76 claim. The Debtor objects to the Proof of Claim on the basis that Claimant did not take into account a forbearance of \$38,442.58 on June 1, 2013, per a stipulation.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (9th Cir. BAP 2005).

Here, Claimant has filed a Proof of Claim form that indicates that the basis for the claim is "Money Loaned." Claimant attaches statements of principal and interest due on the mortgage loan, pre-petition fees,

expenses, and charges, amount necessary to cure default as of the petition date, the promissory note of the loan itself, a Deed of Trust, a legal description of the subject property of the mortgage, and other documentation in support of its claim. The Claim is supported by ample documentation substantiating its claim and qualifies for the evidentiary benefit of Rule 3001(f).

Debtor, however, has not provided evidence supporting its assertion that Claimant agreed to a \$38,442.58 forbearance on June 1, 2013, "per stipulation. Debtor attaches a Modification Agreement signed on July 17, 2012 (Exhibit B, Dckt. No. 67), showing that \$115,327.74 of the New Principal Balance shall be deferred and will be treated as a non-interest bearing principal forbearance. Debtor agreed to not pay interest or make monthly payments on the Deferred Principal Balance, and that \$115,327.75 of the Deferred Principal Balance is eligible for forgiveness.

Debtor does not, however, produce the stipulation that Claimant and Debtor entered on June 1, 2013. Debtor merely asserts that the forbearance was stipulated to and that the amount asserted by Claimant as the amount owed on the claim is incorrect. Debtor has not offered sufficient evidence to rebut the prima facie evidence of OneWest Bank's Proof of Claim.

The court will continue this Objection to [date] at [time] to allow Debtor to file supplemental evidence of the stipulation that she entered with OneWest Bank, providing for the \$38,442.58 forbearance claimed by Debtor in her Objection to Claim.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of 1 filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim number 1 of OneWest Bank, FSB, Claim No. 1 is continued to [date] at [time].

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. 44 days' notice is required. That requirement was met.

**Final Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(3). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim number 2 of OneWest Bank is sustained and the claim is allowed in the amount of \$59,242.00.** No appearance required. The court makes the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 2 on the court's official claims registry, asserts a \$95,636.56 claim. The Debtor objects to the Proof of Claim on the basis that Debtor Susan Marron entered into a stipulation with Claimant OneWest Bank, reducing the original amount of \$119,483.87 by 50% to \$59,242.00 with a single lump sum payment of \$23,700.00, leaving \$35,542 to be paid over 5 years at 0% interest in the amount of \$592.36 per month.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (9th Cir. BAP 2005).

The claim at issue, OneWest Bank's Claim No. 2, indicates that the amount of claim as of the date filed is \$95,626.56, and that the basis for the claim is money loaned. Claimant attaches a statement showing the principal and interest due on the Debtor's loan, the pre-petition fees, expenses, and charges; amount necessary to cure default as of the petition date; the Home Equity Line of Credit agreement on the property commonly known as 11133 Parkland Drive, Truckee, California; a fee schedule; a legal description of the subject property; a deed of trust, and the Planned Unit Development Rider made by Indymac, covering the subject property. The Proof of Claim is properly completed and qualifies for the evidentiary benefit of Fed. R. Bankr. P. 3001(f).

Debtor states that the subject loan was on the books of IndyMac until March 2013, at which point the servicing of the loan was shifted to DTA Solutions LLC from April 2013 through September 2013. IndyMac took the loan back on their own books on October 2013 through November 2013, and then the loan was finally shifted to servicer Ocwen from December 2013 to the present. Debtor states that many of the loan movements were not noticed to the Debtor. Debtor notes that it was difficult to obtain the actual settlement agreement because "it was so far back" in the Creditor's records.

Debtor attaches a Settlement Repayment Plan, designated Exhibit B, Dckt. No. 73, showing that DTA Solutions LLC agreed to accept a reduction in the payments to be remitted to Creditor on behalf of OneWest Bank, FSB. The attachment consists of a letter confirming that DTA Solutions, which appears to be a loan servicer being authorized to accept Debtor's proposed pre-petition settlement on behalf of OneWest Bank, that DTA Solutions accepts the terms of Debtor's proposal.

In this correspondence, DTA Solutions states that they are prepared to settle the original obligation of \$118,483.87 for \$59,242.00. After a down payment of \$23,600.00 due no later than April 12, 2013, DTA Solutions agrees to accept payments of \$592.36 per month for the next 59 months starting on May 12, 2013, with a final payment of \$592.76. The settlement will be rendered null and void if Debtor does not make the payments as specified. Debtor has offered sufficient evidence to rebut the prima facie evidence of OneWest Bank's Proof of Claim, revealing that the original amount of debt owed to OneWest FSB was reduced to \$59,242.00.

Based on the evidence before the court, the objection is sustained and creditor's claim is allowed in the amount of 59,242.00. The Objection to the Proof of Claim is sustained. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of OneWest Bank, FSB, filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim number 2 of OneWest Bank is sustained and the claim is allowed in the amount of \$59,242.00.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 26, 2013. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to continue the Objection to Confirmation to February 25, 2014 at 1:30 pm.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

(1.) The plan treats the claim of Wells Fargo for a second deed of trust with a secured value of \$0.00 but the motion to value to accomplish this has not yet been heard. A motion to value has been set for January 14, 2014. The Motion was granted on that date, thereby resolving this part of Trustee's objection.

(2.) Trustee is not certain as to Debtors' ability to make the plan payments under 11 U.S.C. § 1325(a)(6). Schedule I discloses that Debtors have a 31 year old son as a dependent, "just started" employment at YM Stone Construction, have a \$1,000 monthly "Contribution from Elder Son", (Line 13), and closed their corporation effective November 7, 2013. Debtor's son has formed a new corporation YM Stone Construction, Inc.

Trustee seeks information as to Debtors' medical conditions, current contractor licensing, account statement for their corporation, an itemized listing of assets, liabilities, and transfers of Debtor's corporation for the last year, and explanations for a corporate tax return for 2012 reflecting a generator, office equipment, a Lexus G, furniture, and a notebook as well as loans receivable, loans payable, credit card debt, and Wells Fargo lines of credit.

(3.) The plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Form 22C shows a positive \$4,328.98 for monthly disposable income, and the plan proposes no less than 0% to unsecured creditors and payments of \$150.00 per month. Trustee seeks additional information, such as the amount of any tax refund expected for the 2013 tax year where the 2012 federal tax return reflected a \$4,144.00 tax refund and a net operating loss was incurred.

(4.) Trustee is not certain if Debtors are eligible for Chapter 13 under 11 U.S.C. § 109(e) based on the \$156,226.83 debt to Wells Fargo for an alleged unsecured second deed of trust listed on Schedule D, four priority creditors scheduled for \$1.00 for what appears to be corporate debtor on Schedule E, and \$172,473.00 of unsecured claims on Schedule F, where 40 creditors were scheduled at \$0.00 with an indication they were debts of Debtor's corporation. Trustee seeks to determine if a notice of bulk sale issued under California Commercial Code §§ 6101, et seq. or if a bankruptcy has been filed for Debtor's corporation.

### **Joinder of HCC Surety Group**

Creditor, HCC Surety Group ("Creditor"), submits a joinder to the Trustee's Objection to Confirmation of Debtors' Chapter 13 Plan. In addition to the Trustee's grounds for objection, Creditor asserts that Debtors are not eligible for Chapter 13 relief because their liquidated and noncontingent unsecured debt exceeds \$383,175.00 as set forth in 11 U.S.C. § 109(e).

Creditor states that Debtors have prejudiced Trustee and Creditors' ability to make timely objections to confirmation by falsely disclosing that their unsecured debt did not exceed \$383,175.00. Debtors' liquidated, noncontingent unsecured debts exceed the 11 U.S.C. § 109(e) threshold of \$383,175.00. Debtor's Schedule F indicates that his known unsecured debts are \$172,473, and that the debt owing to HCC is contingent, unliquidated, undisputed, and "0.00."

It was not until January 8, 2014, when Wells Fargo Bank filed its unsecured claim in the amount of \$148,562.96 (Claim NO. 6), that Debtors' manipulation of their schedules was made apparent. Creditor argues that Debtors have acted in bad faith by manipulating their schedules in order to appear that they are eligible for Chapter 13 relief. As such, this court should look beyond the Debtor's schedules to determine the true extent and nature of the Debtor's debt. *In re Scovis*, 249 F.3d 975, 983 (9<sup>th</sup> Cir. 2001).

Creditor states that it has already paid claims totaling \$225,712.67. Debtors did not include a personal liability owing to Wells Fargo Bank, for a business line of credit related for the benefit of Meinikov Construction, Inc. in the amount of \$148,562.92. Accordingly, when all of the undisputed debt listed on Debtors' Schedule F, HCC, Wells Fargo Bank's Line of Credit, and the wholly unsecured second trust deed of Wells Fargo Bank are added together, Debtors' total unsecured debt is at a minimum, \$702,454.03 and exceeds the 11 U.S.C. § 109(e) threshold.

### **Continuance Request by Trustee**

Trustee requests that the objection be continued to February 25, 2014, after the continued meeting of creditors, scheduled for February 20,

2014 to allow Trustee to complete his investigation. Per the Trustee's request, the court will continue the matter to that date and time to permit Trustee to complete his investigation of Debtors' case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Confirmation the Plan is continued to February 25, 2014 at 1:30 pm.



32. [13-30782](#)-C-13 MICHAEL/PAULA NEHER  
NLE-2 Pro Se  
**Thru #33**

OBJECTION TO DEBTORS' CLAIM OF  
EXEMPTIONS  
12-18-13 [[59](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 18, 2013. 28 days' notice is required. That requirement was met.

**Final Ruling:** This Objection to Debtors' Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection to Debtors' Claim of Exemption.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee states that Debtor incorrectly used 11 U.S.C. § 522(b)(2) to exempt the equity on Schedule C, filed on December 4, 2013 (Dckt. No. 50). The Statement of Financial Affairs, Question 15, discloses that Debtors have not moved within 3 years preceding the case.

The petition reflects that both debtors have a California address. Civ. Proc. Code § 703.130 provides that these exemptions are not authorized in these state. The court shall disallow Debtor's claim of exemption on the real property commonly known as 4555 Big Bend Road, Yankee Hill, California. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Debtors' Claim of Exemption filed in this case by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Debtors' claim of exemption in the real property located at 4555 Big Bend Road, Yankee Hill, California be disallowed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on December 6, 2013. 42 days' notice is required. That requirement was met.

Creditor Wells Fargo Bank, N.A., however, was not served in compliance with the provisions of Fed. R. Bankr. P. 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail. Even if certified mail is not required, corporations, partnerships, and other fictitious entities need to be served on officers, partners, managing members, and other designated agents for service of process. Fed. R. Bank. P. 7004(b)(3), 9014; Fed. R. Civ. P. 4(h). Service to Wells Fargo, N.A., an institution insured by the Federal Deposit Insurance Corporation, was not made to the attention of an officer or agent, and was not made over certified mail.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Amended Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes confirmation of the current plan on the following grounds:

(1.) The Plan does not provide a plan term in Section 1.03 of the Plan.

(2.) There is no dividend to unsecured creditors in Section 2.15 of the Plan.

(3.) The Plan will complete in 72 months with the filed claim of mortgage arrears by Wells Fargo Financial in the amount of \$66,764.18. Debtor proposes plan payments of \$2,793.00, although no plan term is provided. The Trustee calculates the plan using 60 months, which totals \$167,580.00. Debtor is proposing to pay the following debts in the Plan:

- Class 1 on-going mortgage payment at \$1,700 with 5% Trustee

compensation, totaling \$1,789.47 for 60 months, totaling \$107,368.20.

- Class 1 mortgage arrears in the amount of \$66,764.18
- Total debt to be paid through the Plan is \$174,132.28, and Debtor is proposing to pay \$167,580.00 into the Plan.

(4.) The plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are over median income and propose plan payments of \$2,793.00 for no plan term or dividend to unsecured provided. Amended Form B22C indicates that Debtor has monthly disposable income of \$9,657.00 for 60 months. The unsecured creditors would be entitled to \$574,020.00; however, Debtor is paying \$0.00 to the unsecured creditors.

Additionally, Debtors' monthly net income on amended Schedule J reflects \$3,011.00 and Debtor is proposing a plan payment of \$2,793.00. Debtors' Schedule J also made the following drastic changes to expenses without any explanation or evidence:

- Telephone was \$0.00, now \$385.00
- Food was \$600.00, and is now \$1,00.00
- Child education increased from nothing to \$150.00
- Personal Care increased from nothing to \$50.00
- Transportation from \$400.00 to \$ 550.00
- Recreation from \$20.00 to \$120.00
- Life Insurance from \$25.00 to \$75.00
- Changes in the Class 1 on-going mortgage payment on Amended Schedule J from \$1,700.00 to \$2,749.00. Class 1 Mortgage should not be on Schedule J.

(5.) Debtor lists Wells Fargo's second deed of trust to be paid in Class 4, but no security exists and this debt should be listed in Class 2 and a Motion to Value Collateral should be filed.

(6.) Debtor's Plan does not meet the Chapter 7 liquidation analysis, under 11 U.S.C. § 1325(a)(4). Debtor filed Amended Schedule C on December 4, 2013, and changed exemptions to 11 U.S.C. § 522(b)(2), which are not proper exemptions. The non-exempt amount on Amended Schedule C is \$119,580.00, and Debtor is not proposing a dividend to unsecured creditors. Trustee has filed an Objection to Exemptions, NLE-2, which is set for hearing on January 28, 2014.

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 2013. 42 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 5, 2013, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 23, 2013. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors did not appear to be examined at the First Meeting of Creditors held on December 19, 2013. Debtor is required to attend the meeting under 11 U.S.C. § 343, and Debtors have not presented any evidence to the court and Trustee as to why they did not appear. The Meeting was continued to January 23, 2014, at 10:30 am.

Debtors must appear and submit to examinations under oath at the meeting of creditors under 11 U.S.C. § 431(a). The Trustee's ability to examine creditors and extract information from Debtors regarding living expenses, creditors, exemptions, income, and other relevant issues concerning Debtors' financial affairs is integral in the plan confirmation process, as Trustee will be able to verify all the information in the petition and ensure that Debtor's Plan meets the requirements of 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good

cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

36. [13-35188](#)-C-13 MARIA ESPINOZA MOTION TO VALUE COLLATERAL OF  
SL-1 Steele Lanphier PATELCO CREDIT UNION  
12-23-13 [[19](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 23, 2013. 28 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion is granted and creditor's secured claim is determined to be \$3,374.00.** No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2004 Lincoln Town Car. The Debtor seeks to value the property at a replacement value of \$3,374.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in June 29, 2004, more than 910 days prior to filing of the petition, with a balance of approximately \$11,875.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$xxxx.00. *See 11 U.S.C. § 506(a)*. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Patelco Credit Union, secured by an asset described as 2004 Lincoln Town Car is determined to be a secured claim in the amount of \$3,374.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$3,374.00 and is encumbered by liens securing claims which exceed the value of the asset.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2013. 35 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 21, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.



Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. 42 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Amended Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 has filed an opposition to confirmation of the plan, for the following reasons:

(1.) The Plan proposes to pay Nationstar Mortgage's arrears in the amount of \$1,139.45 in Class 1. Creditor has filed a claim in this amount. Debtor is proposing to pay the on-going mortgage payment to Nationwide in the amount of \$960.00 directly in Class 4. It appears that the on-going mortgage payment should be in Class 1, to be paid by Trustee unless the plan is modified to clarify that Debtor is delinquent about one mortgage payment, but proposes to pay the delinquency through Trustee and the ongoing payment directly.

(2.) Debtor has not filed a Declaration in support of confirmation.

(3.) The plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is under median income and proposes plan payments of \$88.00 for 50 months with a 0% dividend to unsecured creditors.

(4.) Debtor's 2012 income tax return indicates that Debtor received a tax refund in the amount of \$2,001.00, which is approximately \$166.75 per month, and \$78.75 more than Debtor's Chapter 13 Plan payment. The 2011 tax return provided to Trustee indicates that Debtor received a tax refund of \$4,478.00, which is approximately \$373.16 per month. Debtor has not changed his income tax withholdings so that he will not receive a tax refund in 2-13, and does not propose to pay the tax refunds in to the Plan for the duration of the Chapter 13 Bankruptcy. While Debtor now has schedule 2013, 2014, and 2015 tax returns, and now claims them as exempt in the amount of \$7,500.00, the Debtor does not appear to recognize that those are derived from the disposable income of Debtor and should be paid into the plan to satisfy 11 U.S.C. §

1325(b) .

(5.) Debtor lists a 2004 Chevy Tahoe in Class 4 of the Plan, which states "Co-debtor spouse" makes the auto payment of \$288.00 per month listed on Schedule J. According to the Proof of Claim filed by Santander Consumer USA on August 22, 2013, Debtor incurred this debt 4 months prior to filing this Chapter 13 on April 1, 2013. Debtor is listed as the Co-buyer on the contract. The interest rate is 19.10% and the term of the loan is 59 months.

Co-debtor spouse did not file the Chapter 13 with Debtor; however, her income is listed on Schedule J as \$846.00 per month. Debtor is choosing to pay it directly, which will result in \$6,198.10 of finance charges, or \$103.30 per month.

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

39. [13-34793](#)-C-13 KENNETH COX AND ANA  
TSB-1 MERCADO  
C. Anthony Hughes

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
12-23-13 [[16](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on December 23, 2013. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors did not appear to be examined at the First Meeting of Creditors held on December 19, 2013. Debtor is required to attend the meeting under 11 U.S.C. § 343, and Debtors have not presented any evidence to the court and Trustee as to why they did not appear. The Meeting was continued to January 23, 2014, at 10:30 am.

Debtors must appear and submit to examinations under oath at the meeting of creditors under 11 U.S.C. § 431(a). The Trustee's ability to examine creditors and extract information from Debtors regarding living expenses, creditors, exemptions, income, and other relevant issues concerning Debtors' financial affairs is integral in the plan confirmation process, as Trustee will be able to verify all the information in the petition and ensure that Debtor's Plan meets the requirements of 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

40. [13-34498](#)-C-13    DAWN BONNER    MOTION TO CONFIRM PLAN  
CAH-2    C. Anthony Hughes    12-4-13 [[17](#)]

**Final Ruling:** The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Confirm Chapter 13 Plan, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Confirm Plan, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Confirm Chapter 13 Plan.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Confirm Plan having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Plan is dismissed without prejudice.